

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

LEVI SAELUA, JR.,

No. 1:20-cv-01312-NONE-SKO (HC)

Petitioner,

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DISMISSING  
PETITION FOR WRIT OF HABEAS  
CORPUS

v.

CIOLLI, Warden,

(Doc. No. 5)

Respondent.

Petitioner Levi Saelua, Jr., is a federal prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. On September 16, 2020, the assigned magistrate judge issued findings and recommendations recommending that the pending petition be dismissed. (Doc. No. 5.) The findings and recommendations were served upon all parties and contained notice that any objections were to be filed within twenty-one (21) days from the date of service of that order. (*Id.* at 6–7.) No party has filed objections, and the deadline to do so has expired.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the court has conducted a de novo review of the case. Petitioner’s claim hinges largely on *Allen v. Ives*, 950 F.3d 1184 (9th Cir. 2020) (“*Allen I*”), *petition for rehearing en banc denied*, 976 F.3d 863 (9th Cir. 2020) (“*Allen II*”). The petition for a rehearing *en banc* was denied six days after the magistrate judge issued the pending findings and recommendations. As the undersigned has discussed in a separate case,

1 in that denial, a majority of the judges participating in *Allen II* clarified that the relevant holding  
2 from its decision in *Allen I* did not “open[] the proverbial floodgates” to § 2241 petitions but  
3 instead applied only to certain class of petitioners subject to mandatory sentences. *Gonzalez v.*  
4 *Ciolli*, No. 1:20-cv-00724-DAD-SKO (HC), 2021 WL 1016387, at \*2–3 (E.D. Cal. Mar. 17,  
5 2021) (quoting *Allen II*, 976 F.3d at 868). Here, as noted by the findings and recommendations,  
6 petitioner was sentenced after the guidelines became advisory in 2005, (Doc. No. 5 at 6), and  
7 petitioner does not contend that a mandatory sentence was imposed in his underlying criminal  
8 case, (see Doc. No. 1). Accordingly, the findings and recommendations reached the correct  
9 conclusion even without the Ninth Circuit’s subsequent clarification.

10 The court notes that in the event an appeal is filed, a certificate of appealability will not be  
11 required because this is an order dismissing a petition for writ of habeas corpus pursuant to 28  
12 U.S.C. § 2241, not a final order in a *habeas* proceeding in which the detention complained of  
13 arises out of process issued by a state court. *Forde v. U.S. Parole Commission*, 114 F.3d 878 (9th  
14 Cir. 1997); *see Ojo v. INS*, 106 F.3d 680, 681–682 (5th Cir. 1997); *Bradshaw v. Story*, 86 F.3d  
15 164, 166 (10th Cir. 1996).

16 Accordingly,

17 1. The findings and recommendations issued September 16, 2020 (Doc. No. 5), are  
18 adopted;

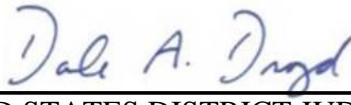
19 2. The petition for writ of habeas corpus is dismissed for lack of jurisdiction; and

20 3. The Clerk of the Court is directed to assign a district judge for purposes of closure  
21 and then to close this case.

22 This order terminates the action in its entirety. In the event a notice of appeal is filed, a  
23 certificate of appealability will not be required.

24 IT IS SO ORDERED.

25 Dated: October 7, 2021

  
26 UNITED STATES DISTRICT JUDGE

27  
28